

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

ACTION ID: 200510113

December 15, 2004

PUBLIC NOTICE

Mr. Gerald M. Gaines, 3739 Morningside Drive, Fairfax, Virginia 22031, has applied for a Department of the Army (DA) individual permit TO IMPACT 9,389 SQUARE FEET (0.22 ACRES) OF DA JURISDICTIONAL WETLANDS TO CONSTRUCT 468 LINEAR FEET OF ROAD ACROSS THE WETLAND COMPLEX KNOWN AS THE 'NORTH DRAIN' IN RODANTHE WITHIN THE PASQUOTANK RIVER BASIN, IN NORTH CAROLINA. The proposed project is located within a private right-of-way easement in Dare County. Mr. Brian Rubino, Quible & Associates, P.C., Post Office Drawer 870, Kitty Hawk, North Carolina 27949, is acting as agent for Mr. Gaines in the processing of this application.

The following description of this project is taken from data provided by the applicant and from observations made during onsite inspections by representatives of the Corps of Engineers. Mr. Gaines proposes to place fill an area of wetlands 20-feet wide and 468-feet long for construction of a road in order to access an oceanfront residential building lot. Two 24-inch diameter culverts will be placed within the existing 12-foot wide drainage ditch in order to maintain continuity between wetlands on either side of the proposed road. The project will begin at the terminus of Midgett Mobile Park Road and continue east across irregularly flooded *Juncus roemerianus* marsh. North Carolina Division of Coastal Management does not claim jurisdiction over this area of the 'North Drain' because past road construction activities and lack of culvert maintenance have retarded the tidal influence within this marsh.

The project crosses 468-linear feet of *Juncus roemerianus* marsh including a 12-foot wide ditch within the marsh. The 'North Drain' connects directly to Pamlico Sound.

Plans showing the work are included with this public notice. The plans and additional information provided by the applicant detailing avoidance and minimization efforts can also be reviewed at the Washington Regulatory Field Office, U. S. Army Corps of Engineers Wilmington District, 107 Union Drive Suite 200, Washington, North Carolina 27889.

This proposal shall be reviewed for the applicability of other actions by North Carolina agencies such as:

- a. The issuance of a Water Quality Certification under Section 401 of the Clean Water Act by the North Carolina Division of Water Quality (NCDWQ).
- b. The issuance of a permit to dredge and/or fill under North Carolina General Statute 113-229 by the North Carolina Division of Coastal Management (NCDCM).
- c. The issuance of a permit under the North Carolina Coastal Area Management Act (CAMA) by the North Carolina Division of Coastal Management (NCDCM) or their delegates.
- d. The issuance of an easement to fill or otherwise occupy State-Owned submerged land under North Carolina General Statute 143-341(4), 146-6, 146-11, and 146-12 by the North Carolina Department of Administration (NCDA) and the North Carolina Council of State.
- e. The approval of an Erosion and Sedimentation control Plan by the Land Quality Section, North Carolina Division of Land Resources (NCDLR), pursuant to the State Sedimentation Pollution Control Act of 1973 (NC G.S. 113 a-50-66).

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The District Engineer's initial determination is that the proposed project would not adversely impact EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

The State of North Carolina will review this public notice to determine the need for the applicant to obtain any required State authorization. No Department of the Army (DA) permit will be issued until the coordinated State viewpoint on the proposal has been received and reviewed by this agency, nor will a DA permit be issued until the North Carolina Division of Water Quality (NCDWQ) has determined the applicability of a Water Quality Certificate as required by PL 92-500.

This application is being considered pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899. Any person may request, in writing within the comment period specified in the notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein, and this site is not registered property or property listed as being eligible for inclusion in the Register. Consultation of the National Register constitutes the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. Presently, unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by work under the requested permit.

Based upon available information, the District Engineer is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973.

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts which the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (in accordance with Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agencies' 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Generally, the decision whether to issue this Department of the Army (DA) permit will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether or not the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. The application and this public notice for the Department of the Army (DA) permit serves as application to the NCDWQ for certification.

Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Wetlands/401 Unit, NCDWQ, 2321 Crabtree Boulevard, Raleigh, North Carolina 27604-2260. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction cost.

Written comments pertinent to the proposed work, as outlined above, will be received in the Corps of Engineers, Wilmington District, Washington Regulatory Field Office, Attn: Mr. William Wescott, Post Office Box 1000, Washington, North Carolina, 27889, until 4:15 p.m., January 15, 2005, telephone (252) 975-1616, extension 25.

MAP FROM:

DARE COUNTY TAX
DEPT. INTERACTIVE
WEBSITE.

NO PHOTO A'

GAINES' LOT

20'
EASEMENT AS DESCRIBED
IN DEED. THIS PROPERTY
ACCESS RIGHT-OF-WAY
IS NOT PART OF INDIVIDUAL
LOT AREA

Parcel Number: 012569000

Conta:

PIN #: 065805182904

GAIN

Deed Bk/Pg: 1519/345

GAIN

Deed Date: 09/12/2003

3739 I

Plat Data: PL: 2 SL: 146

FAIR

Lot: Blk: Sec:

Subdivision: SUBDIVISION - NONE

Location: 23267 MIDGETTS MOBILE CT

Town: RODANTHE

Stories: N/A

Bedrooms: N/A

Baths: N/A

Year Built: N/A

Land Value: \$4600.00

Building Value: \$00.00

Misc. Value: \$00.00

Total Value: \$4600.00

900

0

This map is prepared for the inventory of real property found
compiled from recorded deeds, plats and other public data. I
that the aforementioned public primary information sources st
verification of the information contained in this map.

DARE COUNTY ASSUMES NO LEGAL RESPONSIBILITY FOR T

NOTES:

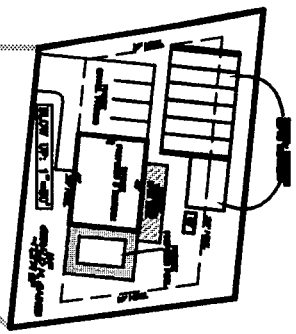
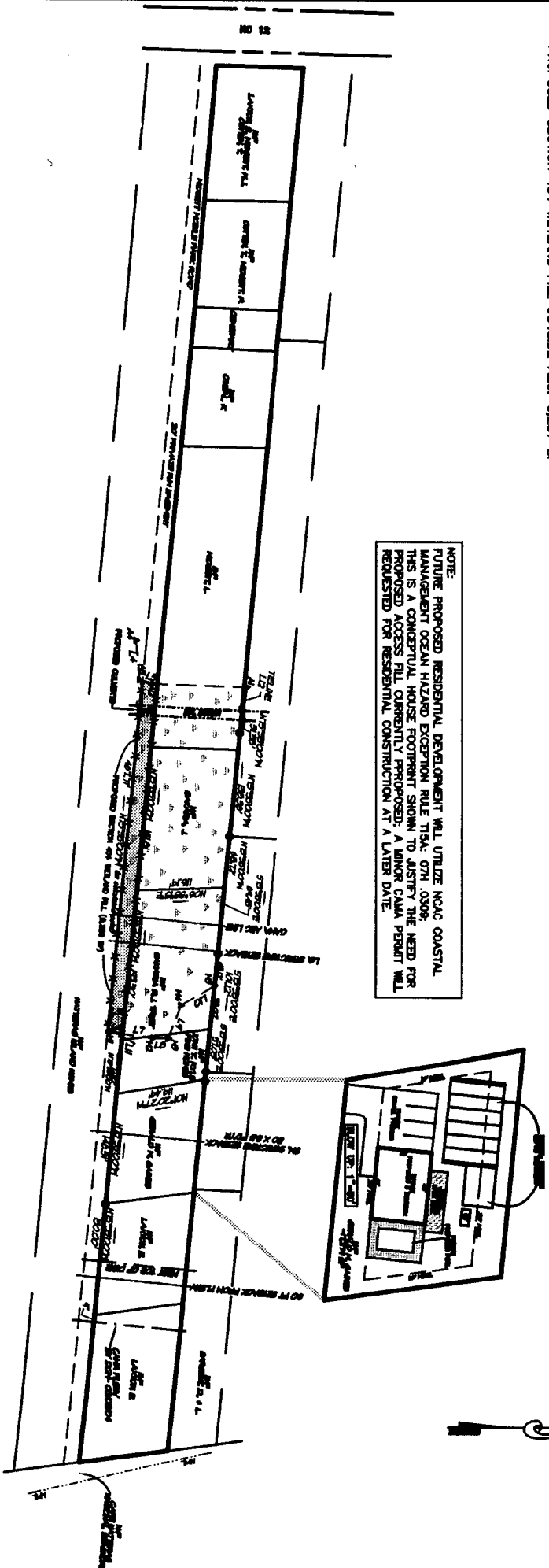
1. APPLICANT: GERALD M. GAINES
3739 MORNINGSIDE DRIVE
FAIRFAX, VA 22031
2. APPLICANT OWNS THE OCEANSIDE LOT INDICATED (THIRD PLATTED LOT FROM EAST)
THE PROPOSED WETLANDS FILL LIES WITHIN A PRIVATE EASEMENT FOR
ADJACENT LOTS (SEE DEED)
3. AREA OF ENVIRONMENTAL CONCERN: THE GAINES LOT AND PORTION OF
THE ACCESS EASEMENT LIE WITHIN THE OCEAN HAZARD AEC DUE TO
EROSION RATES (8.5 FT/YR) AS PER NC DIVISION OF COASTAL MANAGEMENT
4. PROPOSED WORK:
FILL OF 8,389 SF (22 AC) OF SECTION 404 WETLANDS
FOR UPLAND ACCESS TO SUBDIVIDED RESIDENTIAL LOTS; WORK WILL INCLUDE
INSTALLATION OF A DRAINAGE CULVERT IN THE AREA OF THE EXISTING DITCH
FOR EFFECTIVE DRAINAGE; A VEGETATIVE BUFFER WILL BE PLANTED FOR
EROSION CONTROL, AND STORMWATER TREATMENT AS SHOWN; SILT FENCE WILL
BE INSTALLED PRIOR TO GROUND DISTURBANCE.
PROPOSED SECTION 404 WETLAND FILL WITHIN AEC: 3,132 SF
PROPOSED SECTION 404 WETLAND FILL OUTSIDE AEC: 6,257 SF

NOTE:
FUTURE PROPOSED RESIDENTIAL DEVELOPMENT WILL UTILIZE NCAC COASTAL
MANAGEMENT OCEAN HAZARD EXCEPTION RULE T134: 07H 0300G.
THIS IS A CONCEPTUAL HOUSE FOOTPRINT SHOWN TO JUSTIFY THE NEED FOR
PROPOSED ACCESS FILL CURRENTLY PROPOSED: A MINOR CMAA PERMIT WILL
REQUESTED FOR RESIDENTIAL CONSTRUCTION AT A LATER DATE.

NOTE:
SECTION 404 WETLANDS HAVE BEEN DELINEATED BY QUBEL
AND CONFIRMED BY USACE ON 3-28-04

NOTE:
PROPOSED SECTION 404 WETLANDS FILL WITHIN THE AEC IS 3,132 SF;
THE REMAINING 6,257 SF OF PROPOSED FILL THAT INCLUDES CULVERT PLACEMENT
AND DITCH FILL IS OUTSIDE THE AEC

NOTE:
THE SUBJECT LOT WAS PLATTED AND RECORDED 1980. DOCUMENTATION
OF THIS IS FOUND IN EXHIBIT A OF THE DEED INCLUDED IN THIS PACKAGE.



USACE INDIVIDUAL PERMIT PROPOSAL

GAINES PROPERTY ACCESS SHEET 1- OVERALL SITE PLAN

AS PER:
RODANTHE DARE CO. NORTH CAROLINA
SCALE 1"=200' FILE NO. 04009 DATE 11-22-04

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

Quible and Associates, P.C.
ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENCES
P.O. DRAWER 870, KITTY HAWK, N.C. 27849

**GAINES PROPERTY ACCESS
SHEET 2- PROPOSED WORK AREA**

AS REQ.:	
RODANTHE	DARE CO. NORTH CAROLINA
SCALE 1"=100'	FILE NO. 04009 DATE 11-22-04

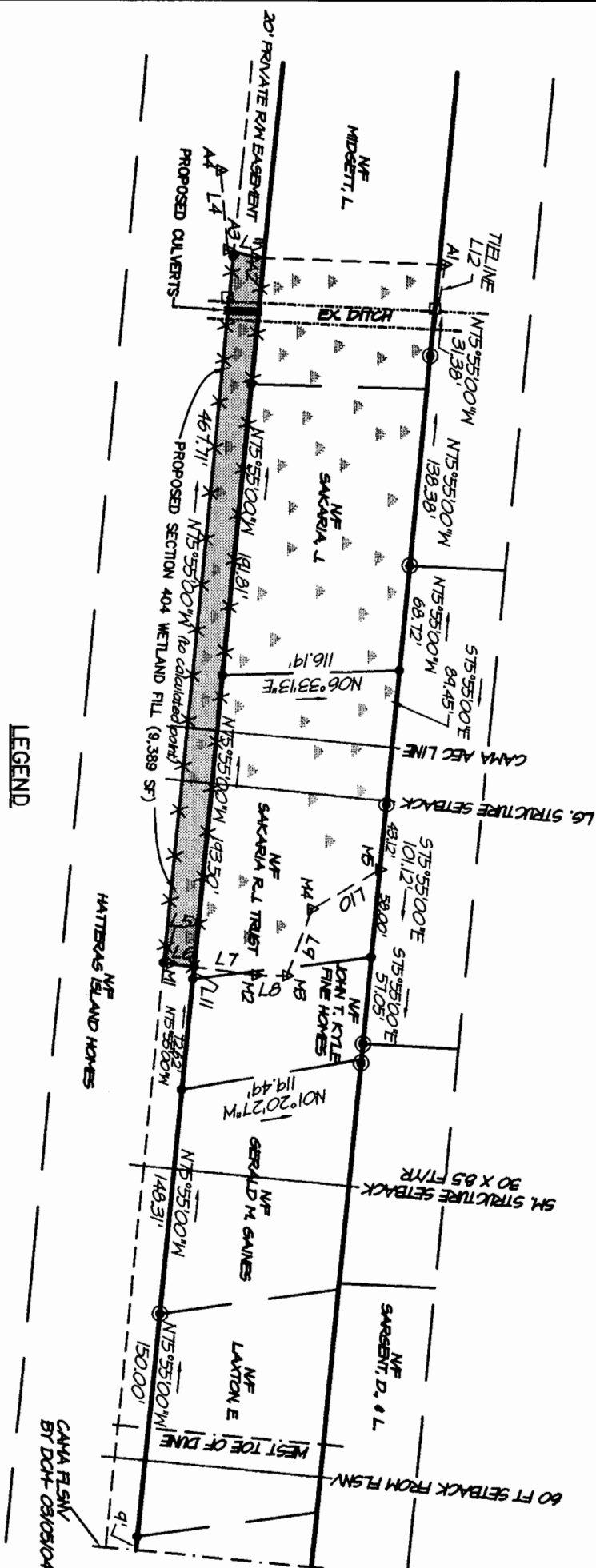
Quible and Associates, P.C.
ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENCES
P.O. DRAZER 870, KITTY HAWK, N.C. 27849

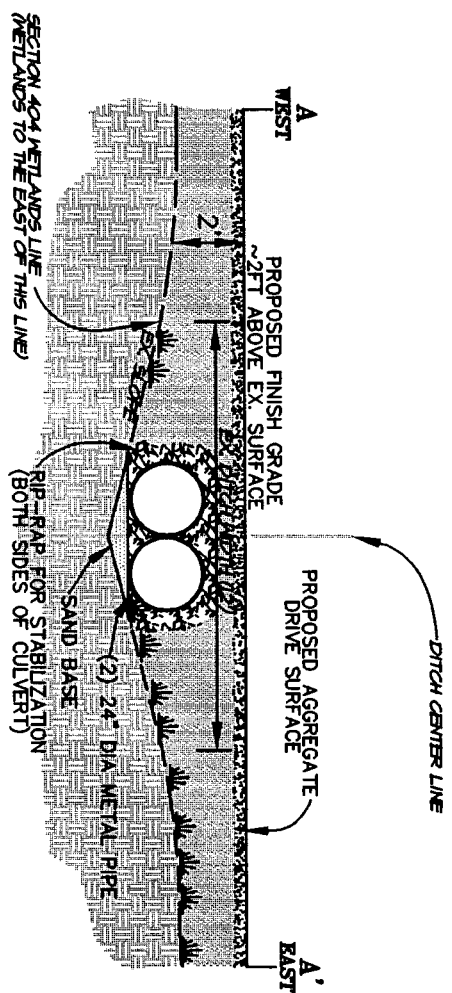
SECTION 404 WETLANDS

**PROPOSED WETLANDS FILL
9,389 SF (0.22 AC)**

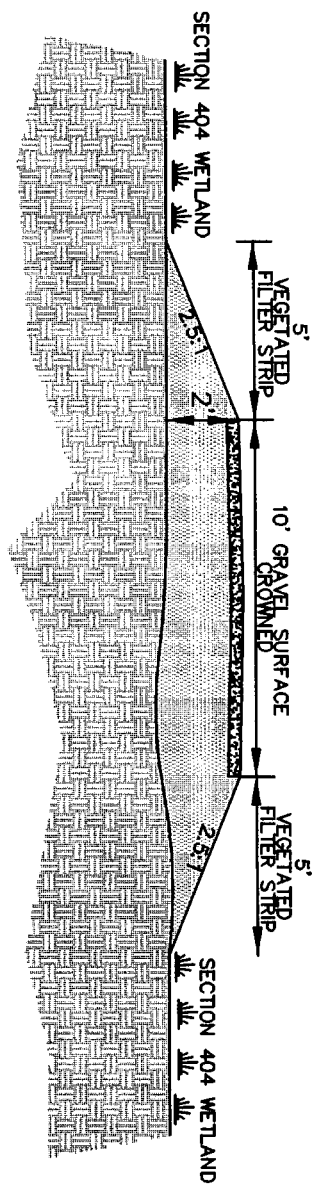
PROPOSED SALT FENCE

GRAPHIC SCALE





DITCH CROSS SECTION



DRIVE CROSS SECTION

USACE INDIVIDUAL PERMIT PROPOSAL

**GAINES PROPERTY ACCESS
SHEET 3- PROPOSED FILL CROSS-SECTIONS**

AS REQ:	
RODANTHE	DARE CO.
SCALE N.T.S.	FILE NO. 04009
	NORTH CAROLINA
	DATE 11-22-04

Quible and Associates, P.C.
ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENCES
P.O. DRAWER 870, KITT Y HAWK N.C. 27949